

to pay its prorata share of those costs. The Association shall render monthly statements specifying Subscriber's share of the cost of operation. Subscriber shall pay the specified amount no later than twenty (20) days from the date of the statement. Failure to make timely payments will be cause for discontinuance of service. In addition, Subscriber shall deposit with the Association, as its duly authorized agent, the amount of \$_____, as security to assure payment of subscriber's share of the costs and its performance of its obligations under this Agreement.

5. The Association will make reasonable efforts to keep the station operational. However, it is specifically understood and agreed to by Subscriber that, should the Station fail to operate for any reason, the Association shall not be responsible for any losses suffered by Subscriber as a result. The Association's responsibility shall be limited to reimbursing Subscriber the portion of its contribution to the cost of the operation which relates to the period that the Station was out of service.

6. The parties understand that the Association, as the licensee of the Station, must maintain overall control of the operation of the Station and it is responsible to the Federal Communications Commission for its proper operation. Subscriber shall operate at all times in accordance with the rules of the Federal Communications Commission and the instructions of the Association.

7. The term of this Agreement is for a period of one (1)

year, commencing on the date on which the Subscriber accepts it.
It may be renewed by mutual written agreement of both parties.
It may be terminated only for material breach of its terms and
conditions.

ACCEPTED:

Subscriber

(Licensee Association)

By _____
Signature

By _____
Title _____

Print Name

Date _____

Title

(area Code) Phone No.

Date

Attachment 7

Application Return Notice for the
Private Land Mobile Radio Services,
dated July 15, 1991, File Ref. 532866-YB,
addressed to Fletcher, Heald & Hildreth
and referring to The Association for East
End Land Mobile Coverage

FEDERAL COMMUNICATIONS COMMISSION
1270 FAIRFIELD ROAD
GETTYSBURG, PA 17325-7245

APPLICATION RETURN NOTICE FOR THE PRIVATE LAND MOBILE RADIO SERVICES

Fletcher, Heald & Hildreth
Attn: George Petrutsas
1225 Connecticut Ave., N.W. Suite 400
Washington, DC 20036-2679

DATE	July 15, 1991
FILE NO.	532866-YB
	DKB

RE: The Association for East End Land Mobile Coverage

INSTRUCTIONS: Your application for station authorization is returned for the reason(s) checked below. Complete or correct your application, re-sign and date your application in the space provided on the reverse side. Return this and all enclosures to the above address. See "NOTICE TO APPLICANT" on the reverse of this form.

☐ Your eligibility is unclear. Please provide a more detailed description of your activities and how radio will be used in connection with them.

☐ If you are requesting authority to acquire a station presently licensed to another person or entity, you should check "Assignment of Authorization" in item 32. Complete the application giving all information pertaining to the new licensee (including eligibility showing) and include a completed FCC Form 1046, Assignment of Authorization, or a similar declaration signed by the present licensee, with your application.

☐ Please advise if the Control you show in item 18 is a Control Station or Control Point. For Control Stations, complete items 1 through 11 (except 7), 14 through 17, and 26 through 29. If the Control Station complies with the 20 ft criterion as defined in Rule Section 90.119(a)(2)(iii), complete only items 1 through 5. Evidence of frequency coordination is required for stations not meeting the 20 ft rule.

~~XXX~~ You MUST resubmit this application through your frequency coordinator if you are requesting the licensing of a new station, modifying an existing licensed station, or if you are making ANY CHANGE to information in items 1 through 25 which has previously been coordinated. See Rule Sections 90.135 and 90.175. FAILURE TO DO SO COULD RESULT IN DISMISSAL OF YOUR APPLICATION AND FORFEITURE OF ANY FEE(S) PAID. Failure to resubmit your application in a timely manner as explained on the reverse of this form will also result in loss of any previously paid fee(s).

☐ Your application is being returned because it did not include frequency coordination as required by Rule Section 90.175. It is recommended that you contact the frequency coordinator in advance to determine if payment of a coordination fee is necessary. Such fees are separate and distinct from any fee charged by the Commission. Please include this Return Notice with your submission to the frequency coordinator to indicate that any necessary Commission fees have been paid. Failure to resubmit your application in a timely manner as explained on the reverse of this form will result in loss of any previously paid fee(s).

☐ Item(s) _____ should be completed or corrected.

~~XXXX~~ Additional information is required to process your application. Please provide a more detailed description of the terms and conditions of your association and its relationship with Norcom Communications. Will Norcom provide all the radio equipment or will members be able to obtain their own mobile and control stations? Provide the names of the principals of Norcom. Provide the names, addresses, telephone numbers, of the principals of your association as well as the name of each of their employers, and their relationship to Norcom and its principals. Provide a copy of the signed membership agreements of the present members of your association. Provide a full explanation of the relationship between the principals of your association and the three other associations which operate through Norcom and have pending applications for trunked radio systems. Be specific; provide full information on any business/financial interests.

SEE REVERSE

FCC 1034G
JANUARY 1991

Attachment 8

Letter, dated August 26, 1991, from
the Association for East End Land Mobile
Coverage to the Federal Communications Commission
referring to Application File No. 532866-YB

The Association For East
End Land Mobile Coverage
70-C Corbin Avenue
Bay Shore, NY 11706

Federal Communications Commission
800 MHz Services
P.O. Box 358235
Pittsburgh, PA 15251-5235

Re: Application for 800 MHz
Trunked system (YB)
File No. 532866-YB
Your Ref. DKB

Dear Madam/Sir:

This responds to your Application Return Notice of July 15, 1991:

1. Terms and Conditions of the Association.

The association has been organized as a vehicle for eligible business in the area to obtain the benefits of trunked land mobile communications efficiently and economically, as contemplated by the Commission's rules, especially Sections 90.61(b) and 90.603(b). The plan is for users to obtain the communications service they desire and to pay their proportionate share of the cost. This approach was recommended by counsel and we feel it is a practical and economical method for accommodating some of the land mobile communication needs of the business community in this area.

2. Relationship with Norcom Communications.

An agreement has been reached with Norcom Communications

Corporation under which Norcom will lease to the association the trunked mobile relay transmitters on a monthly rental basis. Norcom has also agreed to provide for the construction, management, and maintenance of the facility. The association will, however, as the FCC licensee, exercise overall licensee control and will be responsible to the Commission for proper operation of the system.

3. Will Norcom provide all the radio equipment.....?

In accordance with Paragraph 2 of the sharing agreement, a copy of which was provided to the Commission with our May 23, 1991 Amendment, users will be responsible to obtain their own mobile and control station equipment. Norcom will not provide nor sell such equipment to users.

4. Provide the names of the principles[✓] of Norcom.₇₁

Robert L. Nopper

5. Names, addresses, phone numbers of the principals of your association, names of their employers, and their relationship to Norcom and its principals.

The names and address were provided in the May 23, 1991 Amendment which requested a copy of the Articles Of Association additionally:

(a) Timothy J. Mangan. Mangan is employed by T & T Island Communications Management Corp., Inc., telephone 516-378-8299.

(b) Harry Rosenberg. Rosenberg is employed by Reliable Refrigeration Services and is a proposed member of the Board of Directors, telephone 516-595-2700.

(c) William Larkin. Larkin is employed by Suffolk County and is a proposed member of the Board of Directors, telephone 516-348-2826.

There is no business, financial, or family relationship among the three. Mangan is to be the administrator of the association.

6. Copy of signed membership agreement.

We have previously provided you with a copy of the standard sharing agreement we plan to use. However, since our application has not been granted, we have not yet entered into binding, signed agreements with interested potential users. The names and addresses of the entities who plan to use the system have been provided with the application.

7. Full explanation of the relationship between the principals of your association and the three other associations which would operate through Norcom.

As stated in our response of May 23, 1991, there is no financial, business, or family relationship among the principals of the four associations or their employees. The only common element is that Norcom will provide the equipment for the mobile

relay facility, will operate the control point of the association, and will be hired to manage the operation of the system.

Very truly yours,

THE ASSOCIATION FOR EAST
END LAND MOBILE COVERAGE

Date:

8/26/91

By:



Timothy J. Mangan

Attachment 9

Letter, dated August 29, 1991, from
George Petrutsas, Fletcher, Heald & Hildreth,
as counsel for four (4) association applicants,
including The Association for East End
Land Mobile Coverage, referring to four (4)
applications, including the application of The
Association for East End Land Mobile Coverage
File No. 532866-YB

5729

August 29, 1991

VIA FEDERAL EXPRESS
Federal Communications Commission
Licensing Division
Land Mobile Branch
1270 Fairfield Road
Gettysburg, PA 17325-1245

10/1/91
Rosen
J. Symington

- Re: (a) Land Mobile Radio
Association of Long Island
File No. 534391-YB
(b) Wireless Communications
Association of Suffolk County
File No. 534390-YB
(c) Central Suffolk Association
of Land Mobile Users
File No. 532865-YB
(d) The Association for East End
Land Mobile Coverage
File No. 532866-YB

Dear Sir/Madam:

Re-submitted herewith are the above-referenced applications together with responses to your inquiries.

Each applicant has responded to your inquiries fully and with specificity, as you requested. To summarize, each association is independent of the others and so are their principals. Each is eligible for the facilities it seeks. Each application is fully in accordance with the Commission's rules. The frequency coordinator has cleared each application. The facilities applied for are needed and will go a long way towards meeting the land mobile communications requirements of the business community in the eastern part of Long Island.

VIA FEDERAL EXPRESS
Federal Communications Commission
Land Mobile Branch
August 29, 1991
Page Two

Therefore, there is simply no reason to delay any further grant of these applications.

There is no hidden party in interest issue here. All of the parties involved have been fully disclosed. Norcom Communications is expected to rent to each association the equipment for the trunked mobile relay facility. Nothing unusual here. Each association will have a leasehold interest in the equipment of that facility. Additionally, it is planned that Norcom would be hired to operate the control point (actually, a supervisory control point) and to provide administrative/management services to each association. However, the association will maintain control of its facility, will retain responsibility for its proper operation, and will oversee and supervise Norcom's management performance. Nothing unusual here either. The fact that Norcom will provide services to more than one association is of no legal significance. The Commission's Rules do not prescribe (and properly so) from whom or how its licensees may obtain radio equipment and management/administrative services. Surely, it is common for equipment vendors (such as Motorola, E.F. Johnson, and others) to rent equipment and to provide managerial services to more than a single licensee in a particular market. No difference here.

Finally, as pointed out in our May 24, 1991 letter, the non-profit association is an eligible entity under the rules, and it is particularly suitable for establishing trunked systems to serve the needs of communications users economically. Eligibility for non-profit associations is specifically provided for in Sections 90.61(b) and 90.603(b) of the Commission's rules.

In sum, the above-referenced applications are fully consistent with the Commission's rules, raise no "party in-interest" issue, and the applicants have responded fully to your

VIA FEDERAL EXPRESS
Federal Communications Commission
Land Mobile Branch
August 29, 1991
Page Three

inquiries. Accordingly, the Commission is respectfully requested to grant these applications without further delay.

Very truly yours,

George Petrutsas
Counsel for
Land Mobile Radio Association
of Long Island
Wireless Communications
Association of Suffolk County
Central Suffolk Association
of Land Mobile Users
The Association for East End
Land Mobile Coverage

GP/cm
Enc.4

Attachment 10

Letter, dated March 10, 1992, from
the Federal Communications Commission to
Timothy J. Mangan, The Association for East End
Land Mobile Coverage, signed by
Terry L. Fishel, Chief, Land Mobile Branch

Federal Communications Commission

Gettysburg, PA 17326

MAR 10 1992

In Reply Refer To:

7110-16

Timothy J. Mangan
The Association for East End Land Mobile Coverage
70-C Corbin Ave.
Bay Shore, New York 11706

Dear Applicant:

Pursuant to the provisions of Rule 1.958, the Private Radio Bureau is dismissing your application bearing file number 532866.

Rule 1.958 states that an application not meeting the provisions of Commission Rules or other requirements may be dismissed as defective. The Association for East End Land Mobile Coverage requested a five channel trunked Business Radio Service system in Sag Harbor, New York. Rule 90.631(a) requires that trunked channels be assigned on the basis of a loading of 100 mobile units per channel. The Association provided a list of users which plan to use the system. When asked for signed agreements from these members, the Association stated that it actually has no members which have signed agreements to use the system. Because the Association therefore has no members with a requirement for radio communications, it does not justify the channels requested. Its application is therefore dismissed.

Sincerely,



Terry L. Fishel
Chief, Land Mobile Branch

cc: George Petrutsas

Attachment 11

Letter, dated April 3, 1992, from
George Petrutsas, Fletcher, Heald & Hildreth,
as counsel for The Association for East End
Land Mobile Coverage to Ralph H. Haller, Chief
Private Radio Bureau, Federal Communications
Commission, titled Request for Reconsideration
and referring to Application File No. 532866

April 3, 1992

VIA FEDERAL EXPRESS

Ralph A. Haller
Chief, Private Radio Bureau
Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17325

Re: Application for The Association for
East End Land Mobile Coverage
File No. 532866

REQUEST FOR RECONSIDERATION

Dear Mr. Haller:

On behalf of the Association for East End Land Mobile Coverage (hereinafter referred to as the "Association" of "AEEL"), the Bureau is requested to reconsider and set aside the March 2, 1992 decision of the Chief, Land Mobile Branch, Licensing Division, dismissing its application for a five-channel trunked system on frequencies in the 800 MHz band. Briefly, it is respectfully submitted that the staff's decision to dismiss the application was improper in that it was based on requirements not sanctioned by the applicable rules.

By way of background, the applicant is a non-profit association organized under the laws of the State of New York. Its purpose is to provide trunked land mobile radio service to Part 90 eligibles on a cost-sharing basis. As such, AEEL is eligible for a trunked system pursuant to Section 90.603(b) of the Commission's Rules.¹ The application was fully coordinated

¹ See: Land Mobile Radio Service, 46 FCC 2d 752, 767 (1974) where the Commission observed:

"In the second license classification
. . . the licensee may be a non-profit corporation or association, formed for the purpose of providing radio facilities to

Mr. Ralph A. Haller
April 3, 1992
Page 2

and it was accompanied by an engineering statement supporting the selection of the frequencies requested. Some time later, in response to the staff's request, the applicant filed an amendment by which it increased the number of proposed mobile units to 500, furnished a copy of its Articles of Association, and a copy of the standard service agreement it plans to use, and expressly certified that a minimum of 70 units per channel would be placed in operation within five years. It is respectfully submitted that the foregoing satisfied all reasonable requirements of the applicable Rules.

The staff, nevertheless, dismissed the application and justified its decision as follows:

Rule 90.631(a) requires that trunked channels be assigned on the basis of a loading of 100 mobile units per channel. The Association provided a list of users which plan to use the system. When asked for signed agreements with these members, the Association stated that it actually has no members which have signed agreements to use the system. Because the Association has no actual members with a requirement for radio communications, it does not justify the channels requested. Accordingly, its application is hereby dismissed.

The staff's letter is in Attachment A. However, there is no requirement in Section 90.631, or elsewhere in Subpart S, for signed service agreements or that the Association justify the number of channels it has requested by signed agreements. See, also Section 90.607(c), for the supplemental information applicants for trunked systems must file. There is no such requirement in that rule. Section 90.631 requires only that the applicant "certify" that ". . . a minimum of 70 mobiles for each channel authorized will be placed in operation within five years of the initial license". The applicant has so certified. The staff's requirements for a written agreement is not only not required by Section 90.631, it is discriminatory and unreasonable, particularly since it has requested the minimum number of channels suitable for a trunked system.

It is discriminatory because such a requirement is not imposed on the other class of 800 MHz applicants who provide

qualified participants"

Mr. Ralph A. Haller
April 3, 1992
Page 3

service to users; specifically, applicants for SMR trunked authorizations. The only difference between SMR applicants and non-profit association applicants is that the former provide service to users on a for-profit basis, while the latter do so on a non-for-profit basis. Both classes of applicants are eligible for licenses in the 800/900 MHz bands under Section 90.603 of the Commission's Rules.

Requiring written service agreements is also unreasonable because such a requirement is practically impossible to comply with. Users, understandably, do not want (and should not be required) to commit to a service that does not yet exist and to purchase costly equipment for operation on a system that cannot be tested and, therefore, cannot assure that it would meet their requirements. That is, obviously, why the Commission abandoned long ago the requirement for the submission of equipment purchase orders. See Public Notice No. 6461, released September 13, 1983. See, also, Section 90.175(d) where applicants ". . . are strongly advised not to purchase radio equipment operating on specific frequencies until a valid authorization has been issued by the Commission." The same rationale applies here.

Moreover, there is no rule requirement that, to be eligible, association applicants must have members with radio communications requirements. Section 90.603(b) merely requires that any entity is eligible for 800/900 MHz licenses if it proposes to provide service ". . . to any person . . ." eligible under Subparts B, C, D or E ". . . on a not-for-profit, cost-shared basis." (Emphasis added). This applicant fully meets that requirement. See, also, Land Mobile Radio Service, 45 FCC 2d at 767.

Finally, AEEL has requested only five channels, the practical minimum number required for an efficient trunked system. Cf. Sections 90.621(a)(1)(iv), 90.627(a). See also, Part 90 Amended, 90 FCC 2d 1281, 1309 (1982).

The applicant is not unmindful of the provisions of Section 90.179(d). However, Section 90.179(d) is inconsistent with Section 90.631(b) and Section 90.601 provides that:

". . . in case of conflict, the provisions of this subpart (i.e., Subpart S) govern with respect to licensing and operation in these (i.e., 800/900 MHz) frequency bands."

Mr. Ralph A. Haller
April 3, 1992
Page 4

See also, Second Report and Order, Id., p. 782. Subpart S sets out in detail the regulations governing the licensing and operations of all land mobile systems in the 800/900 MHz bands. Section 90.631 sets out the same requirements for licensing all trunked systems; whether they are to be private, non-profit, or commercial.

The regulatory approach the Commission has adopted for the 800 MHz bands is to require licensees to construct their facilities within specific construction periods and to load them within the license term, otherwise the frequencies assigned, or some of them, are taken back. Section 90.179(d), which appears to impose pre-licensing showing of need requirements, is inconsistent with the Commission's approach for regulating 800 MHz systems. It makes no sense to require both a pre-grant showing of need and the "certification" prescribed by Section 90.631(b). The more rational construction of the Commission's Rules would be to require AEEL, and other Section 90-603(b) applicants, to comply only with the licensing rules in Subpart S. Such interpretation would be consistent with Public Notice No. 6461, referred to above, for example, where the Bureau announced, in effect, that it will rely on post-licensing enforcement of construction and loading requirements to assure against hoarding of frequencies and did away with pre-grant demonstration of need requirement.

Such policy has been applied to SMR applicants all along. They do not have to provide service agreements. It is discriminatory to treat non-profit applicants differently.

Finally, the staff's requirement that the applicant provide written service agreements with members is inconsistent with prior staff actions in similar situations. For example, in 1989, the staff granted a license to the Land Mobile Radio Association, Inc., call sign WNMG-573, without requiring the submission of written service agreements or membership lists. Indeed, the Articles of Incorporation of that association, a copy of which was furnished to the staff, specifically provided that the association will not have members. The action of the staff in that case was proper, fully consistent with the Commission's 800 MHz rules and should be followed here as well.

Mr. Ralph A. Haller
April 3, 1992
Page 5

For the foregoing reasons, the Bureau is requested to set aside the staff's action of March 2, 1992, and to grant the above-referenced application.

The Bureau is finally requested not to release the frequencies involved for reassignment until action is taken on this request for reconsideration.

Very truly yours,

FLETCHER, HEALD & HILDRETH

George Petrutsas
Counsel for the Association
for East End Land Mobile
Coverage

GP:cej
Attachments

cc: Mr. Terry Fishel (w/attachments)
Carol Foelak, Esquire (w/attachments)

Attachment 12

Letter, dated September 24, 1992, from
George Petrutsas, Fletcher, Heald & Hildreth,
addressed to Terry L. Fishel, Chief, Land
Mobile Branch, Federal Communications Commission
referring to six (6) applications, including
the application of The Association for
East End Land Mobile Coverage

5729

September 24, 1992

VIA FEDERAL EXPRESS

Mr. Terry L. Fishel
Chief, Land Mobile Branch
Federal Communications Commission
1270 Fairfield Road
Gettysburg, Pennsylvania 17325-7245

Re: Applications of

- (a) Metro New York Assoc.
File No. 571588
Stamford, Connecticut
- (b) The Association for East End
Land Mobile Coverage
File No. 532866
Sag Harbor, New York
- (c) Wireless Association of Suffolk County
File No. 534390
Manorville, New York
- (d) Central Suffolk Association of
Land Mobile Users
File No. 532865
Riverhead, New York
- (e) New York LMR Association
File No. 566318
Plainview, New York
- (f) Land Mobile Association of Long Island
File No. 534391
Manorville, New York

Dear Mr. Fishel:

I represent the above-listed non-profit associations. Their applications are before the Commission on reconsideration. To resolve the issues raised by the staff and by the applicants in their respective reconsideration petition, I have had discussions looking towards reaching settlements with the staff of the

Mr. Terry L. Fishel
September 24, 1992
Page 2

Compliance Branch, Land Mobile and Microwave Division. There have been no objections filed by any third party and there are no competing applicants. Therefore, there are no ex parte issues raised by these discussions and by this letter. Based on the tentative agreement with the Compliance Branch, I am making the following proposal for settlement.

(1) First, the Association for East End Land Mobile Coverage (Sag Harbor) and Central Suffolk Association of Land Mobile Users (Riverhead) would reach an agreement under which Central Suffolk would withdraw its application and the Association for East End Land Mobile Coverage would agree to make its facilities available for use by those now planning to use Central Suffolk's proposed system;

(2) Wireless Association of Suffolk County (Manorville) and Land Mobile Association of Long Island (also, Manorville) would reach a similar agreement, so that the application of the Land Mobile Association of Long Island would also be withdrawn;

(3) The surviving applicants would accept grants with a requirement that their respective systems would achieve a loading of 70 units per channel by the third anniversary of their respective licenses;

(4) Each of the associations, including those who would withdraw their applications, and their principals would agree not to file any applications or seek additional frequencies directly or indirectly unless the channels assigned to it have met the current loading requirements; and

(5) Each association and its principals to receive a grant would agree not to assign its station license, directly or indirectly, to any other entity during the first term of the license.

(6) All remaining applicants would assure the Commission that service would be provided only to entities eligible in the Business Radio Service and only on a cost-sharing non-profit basis.

It is respectfully submitted that the agreed to settlement summarized above would be in the public interest. Associations, are, of course, eligible entities for trunked systems under Section

Mr. Terry L. Fishel
September 24, 1992
Page 3

90.603(b) of the Commission's Rules. Each applicant association has requested the minimum number of frequencies needed for a reasonable trunked operation in the area involved. The frequencies requested were "discovered" after extensive and expensive research; and they were "cleared" following engineering studies and after coordination by two coordinating entities (SIRSA and NABER). It should be noted that the co-channel licensees were notified during the coordination process and that they have voiced no objection. Because the applications were in effect "engineered-in", it is doubtful that the frequencies involved would be readily available to others. Therefore, grant of the applications would allow use of frequencies which might otherwise remain fallow.

The applicants are not speculators. Each application is the result of genuine efforts to meet communications requirements in areas where, because of the dominance of the New York City metropolitan area, very few frequencies have been made available. Because each application is a plan to meet genuine needs, each applicant association would agree to load its system in three rather than the customary five years and would agree not to assign its license before it is loaded. Two applications would be withdrawn as a result of system sharing agreements. Therefore, the Commission would be assured that the frequencies would be put to good use and without delay.

In summary, although some of the terms of the proposed settlement would be harsh, the applicants would be willing to accept them as the "price" for bringing this matter to a close and provide some frequency relief in their respective areas.